IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE JURISDICTION
(SUO MOTU) CONTEMPT PETITION NO.4 OF 2005

High Court on its own Motion ...Petitioner.
V/s.
1.Appaso Bapuso Patil
2.Jotappa Kadappa Walaki
3.Basappa Thalyappa Kambale
4.Dundappa Satyappa Goni
5.Shankar Irappa Digambari
6.Shivappa Rama Sutar
7.Kempana Baswani Hulloli
all residing at Baralgundi,
Tal: Gadhingalaj, Dist. Kolhapur ..Respondents.

Smt.P.H.Kantharia, A.P.P. for the State/Petitioner.
Shri P.D.Dalvi for the Respondent No.1.
Shri Amit Borkar for the Respondent Nos.4 to 7.

CORAM: B.H.MARLAPALLE &
J.H.BHATIA, JJ.
RESERVED ON : 6th December, 2006.
PRONOUNCED ON: 14th December, 2006.

ORDER: (Per J.H.Bhatia, J.)

1. Contemnor Nos. 1 t 6 are original petitioner nos.2 to 7 and contemnor no.7 is original respondent no.4 in writ petition no.1489 of 2001.

2. Writ Petition No.1489 of 2001 was filed by petitioner no.1, Shri Durdundeshwar V.K.S.(VIKAS) Seva Sanstha Maryadit, (in brief the society) and six others. It was contended that petitioner no.2-Appaso Bapuso Patil, chairman of the society was in majority and the petitioner nos.3 to 7 were members of the said society

and his supporter. Respondent no.4-Kempana was the vice-chairman of the society and was in minority. Election for directors of respondent no.3-Kolhapur District Central Co-operative Bank Ltd., Kolhapur was to be held and for that purpose, the society was to nominate its delegate, who would be included in the voters list for the said election. The managing committee of the society in the majority nominated petitioner no.2-Appaso Patil as its delegate. Voters list was published by the Collector in which name of petitioner no.2 was shown as a delegate of the society and as a voter. After that respondent no.4 concocted a resolution and on the basis of that, raised an objection about the inclusion of the petitioner no.2 in the said voters list. On the basis of that, collector deleted the name of petitioner no.2. That concocted resolution was challenged by the society and petitioner no.2 in a Dispute No.1773 of 2000. As the learned Co-operative Judge did not pass any interim order on the application for temporary injunction, the said petitioners preferred an Appeal No.328 of 2000 before the Maharashtra State Co-operative Appellate Court. Appeal was allowed and respondent no.4 was restrained from acting as the delegate of petitioner no.1-society. Accordingly, name of petitioner no.2 was included in the final voters list. Respondent no.4 filed two writ petitions

challenging the order of the Collector as well as the order of the Co-operative Appellate Court. Later on, Collector issued supplementary voters list whereby name of petitioner no.2 was again deleted and name of respondent no.4 was included in the voters list. That supplementary voters list was challenged by the petitioners by filing writ petition no.1489 of 2001.

3. Respondent No.4 filed Civil Application No.484 of 2001 contending that the petitioner nos.5 to 7 in writ petition no.1489 of 2001 had neither signed the writ petition nor the Vakalatnama filed alongwith it and that signatures purporting to be of petitioner nos.5 to 7 were fake and forged and thus, petitioner no.2 had committed a fraud on the Court and thus, had committed criminal contempt. In support of the said application, he also filed affidavit of himself and affidavit of petitioner nos.5 to 7. In view of the allegations made in the Civil Application No.484 of 2001, the learned Single Judge by the order dated 20th March, 2001 directed to issue notice to petitioner no.2 to 7 as well as respondent no.4-Kempana to show cause as to why they should not be punished for contempt of this Court. The petitioner no.2 filed affidavit-in-reply denying the allegations made by respondent no.4 in the said application and he maintained that petitioner nos.5 to 7

had infact signed the petition. According to him, respondent no.4 had made false allegations. He also contended that petitioner no.7-Shivappa Rama Sutar had deliberately and willfully filed false affidavit with an ulterior motive and under the influence of other political leaders. He further contended that petitioner no.6- Shankar Irappa Digambari was forcibly taken away by respondent no.4 and about the same, Shivanand, son of petitioner no.6 had filed a report with the police at Gadhinglaj on 14-3-2001. Affidavit of petitioner no.6 was also taken under force. He further contended that petitioner no.5-Dundappa Goni being an employee of sugar factory was under influence of his rivals and he had taken the stand against him on some ill advice.

4. In view of the facts stated above, it is clear that there is a dispute as to whether the writ petition no.1489 of 2001 was infact signed and filed by petitioner nos.5 to 7 or their signatures were forged by petitioner no.2 or his companion petitioners no.3 and 4. While according to petitioner nos.5 to 7 and respondent no.4 their signatures were forged and fake, according to petitioner no.2, their signatures are genuine but only under political or other influence and pressure exerted by respondent no.4, they have changed their stand and have filed false affidavits. This being the disputed

fact, it will be difficult for this Court, while dealing with the contempt petition, to come to a conclusion as to who has made true statement and who has made false statement and who has committed the contempt. Taking into consideration rival allegations and affidavits filed by the parties, it is very difficult to decide who is right and who is wrong and who has committed the contempt of the Court. It is material to note that the notice for contempt was issued to all petitioner nos.2 to 7 as well as respondent no.4 which shows that it is difficult to understand and decide who has actually committed contempt of the Court by filing false affidavits, etc.

5. In somewhat similar circumstances, in M.R.Parashar and others v. Dr. Farooq Abdullah and others AIR 1984 SUPREME COURT 615, their Lordships observed:

> "In face of denial by one and an assertion by the other without more, it is difficult to decide who is right. On one hand is the tendency to ridicule the system of justice and malign those who administer it. On the other is the propensity of the fourth estate for some little sensation and its political involvement. When political considerations pollute the stream of life, sifting truth from falsehood becomes a formidable and forbidding task. In these circumstances, we are unable to record a positive finding that the allegation that the Chief Minister made the particular statements

> is proved beyond a reasonable doubt. What is involved in this petition is criminal contempt and therefore, it is necessary to apply that particular standard of proof."

These observations are aptly applicable to the facts of the present case. In view of the given circumstances and the conflicting statements, it is difficult to record a positive finding that contemnor nos.1 to 7 or which of them have committed contempt of the Court, atleast it can not be proved beyond reasonable doubt.

6. In view of the above circumstances, we discharge the Suo Motu Contempt Notice issued against contemnor nos.1 to 7.

(J.H.BHATIA,J.) (B.H.MARLAPALLE,J.)